

# Article 370

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## Law and Politics



DAYA SAGAR LOOKS INTO THE MIRROR OF A. G. NOORANI



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**Jammu Kashmir Study Center**

Kargil Bhawan, Ambafala Complex, Jammu



**Article 370 : Law and Politics**  
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**Mirror of A. G. Noorani**

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## P R E F A C E

An article (JAMMU AND KASHMIR Article 370: Law and politics) by A.G. Noorani appeared in Frontline Magazine ( from the publishers of The Hindu ) in Volume 17 - Issue 19, Sep. 16 - 29, 2000 immediately after the J&K Legislative Assembly adopted the by resolution based on the Report of The State Autonomy Committee on June 26, 2000.

There have been many other articles by Mr. Noorani on J&K affairs and his opinions have been mostly Kashmir Valley centric generally focusing on the questions and demands raised by those leaders who see the 1947 Accession of J&K with Indian Dominion and the Constitution of J&K / India differently than they see in relation to other Indian States.

The J&K affairs are still a subject of debates. The material in the market available mostly pleads anti India cause. Very less ( in comparison to those who hold adverse understanding ) has been written and distributed in response to carry the right interpretations and legal facts to even the common people of India, what to talk the outside world.

Mr. A.G. Noorani has also got published books like Article 370 A Constitutional History of Jammu and Kashmir . He has been a very read and known commentator on J&K affairs ( "Kashmir " ). I feel that there is must need to discuss the affairs for the people.

I ,therefore, thought for writing on the subject , keeping the article of Mr. Noorani in Frontline magazine September 16-29 , 2000 in focus. This write up has been struc-

tured in manner that the views of A. G. Noorani are kept in direct focus. To be brief I shall not enter into the minute details of references / dates referred there to, unless very very necessary..

I have worked on the principle that objective is solution and not prolonged debates, the discussion should be more limited to orders and laws instead of the opinions of individuals , discussions and proceedings of meetings unless it is absolutely unavoidable. Hope Mr. A. G. Noorani would accept this as a humble effort from a friend who has due regards for him, and not otherwise.

Any opinions and suggestions worth bringing peace and prosperity for my people would be welcome.

Daya Sagar



# Article 370 : Law and Politics

**Daya Sagar (DS) looks in the Mirror of A. G. Noorani ( AGN)**

AG N : The Constitution recognizes the special status of Jammu and Kashmir in Article 370.

DS : No , Art 370 has not been called special provision / status in the Constitution of India , it was called Temporary provision for time being. Though it appears under Part XXI ( TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS ) of Constitution of India , it has been named Temporary provisions with respect to the State of Jammu and Kashmir and not special provisions. So, confusions should not be cultivated

AGN : The Central Government's policies since 1953 have totally undermined its ( Art 370 ) autonomy..

DS : Simply accusing will not serve, make technical references please.

AGN : Jawaharlal Nehru having said in the Lok Sabha "I say with all respect to our Constitution that it just does not matter what your Constitution says; if the people of Kashmir do not want it, it will not go there. Because what is the alternative? The alternative is compulsion and coercion..."

We have fought the good fight about Kashmir on the field of battle... (and) ...in many a chancellery of the world and in the United Nations, but, above all, we have fought this fight in the hearts and minds of men and women of that State of Jammu and Kashmir.

Because, ultimately – I say this with all deference to this Parliament – the decision will be made in the hearts and minds of the men and women of Kashmir; neither in this Parliament, nor in the United Nations nor by anybody else," (Jawaharlal Nehru in the Lok Sabha on June 26 and August 7, 1952. – Selected works of Jawaharlal Nehru, Vol. 18, p. 418 and vol. 19 pp. 295–6, respectively. )

DS : True, Nehru has said many things, even in principle Nehru' s Congress did not endorse the two nation theory. The individual opinions and expressions do not become law / fortunes. Many other statements / clarifications by other senior elders could be quoted, this way debates would never end. Let us go with the written laws / orders / approvals.

AGN: Quotes B. K. Nehru, Governor of "Kashmir" J&K from 1981 to 1984 (his memoirs published in 1997 (Nice Guys Finish Second; pp. 614–5). :– "From 1953 to 1975, Chief Ministers of that State had been nominees of Delhi. Their appointment to that post was legitimised by the holding of farcical and totally rigged elections in which the Congress party led by Delhi's nominee was elected by huge majorities."

DS : What was B. K. Nehru doing from 1981 to 1984 , he commented after 13 Yrs ?. This way was not Sheikh Abdullah also a "puppet" of Delhi in 1975 ? Was the elections 1977 and 1996 also rigged ? If so then how can AGN see the wills and truths about J&K in the expressions of NC and views of Sheikh Abdullah. AGN / BKN should prove the rigging, simple expressions do not stay.

Again, the Question comes Why only some Kashmir Valley leaders allege like this ?



AGN : New Delhi had second thoughts on Article 370. It could not be abrogated legally.

DS : No , article 370 can be abrogated in a legal constitutional manner.

AGN : Art 370 was reduced to a husk through political fraud and constitutional abuse.

DS : Please quote any amendment, if at all, has been made in Article 370 of COI abusing the Constitution.

AGN: The current debate is much more than about restoration of Article 370 by erasing the distortions.

DS : What distortion is there in article 370 , please be specific. I have not found any.

AGN : It is about redressing a moral wrong.

DS : What about the moral wrong done by Sheikh Abdullah of which even J.L Nehru had been the victim who had managed release of SMA from jail in September 1947 when Sheikh Abdullah had pledged total loyalties for Maharaja Hari Singh?

AGN :The United Front government's minimum programme, published on June 5, 1996, said "respecting Article 370 of the Constitution as well as the wishes of the people, the problems of Jammu and Kashmir will be resolved through giving the people of that State the maximum degree of autonomy.

DS : Who denies it. Autonomy does not mean disintegration / Azadi. Mr. Noorani does not say any thing about the Self Rule of PDP, does he endorse such demands and such types of autonomies" ?

AGN : Constitutional abuse accompanied political fraud.

DS : Be specific, no vague allegations please.

AGN: Article 370 was intended to guarantee Kashmir's Autonomy.

DS : What then even if AGN interpretation is accepted. Does Mr. Noorani mean that Kashmir is not J&K ? Article 370 does not say so any where. Yes some procedural channel was kept as regards J&K in view of prevailing circumstances temporarily to stay for longer time in comparison to other states that too acceded and the Princes too took some time to define there relationship / express total oneness with the Constituent Assembly of Independent India Dominion that was to frame the Constitution of India, may from a day to some months ( but before 26 Jan 1950 ). It can not be overlooked that Yuvraj Karan Singh , the Regent ( designated authority under Indian Independence Act 1947 ) too had issued a proclamation on 25th November 1949 formally owning the Constituent Assembly of India and its final draft.

AGN ::On December 4, 1964, Union Home Minister G. L. Nanda said that (art 370) would be used to serve as "a tunnel in the wall" in order to increase the Centre's power

DS : What is wrong. After all Art 370 refers to procedures / jurisdictions / powers . Mr. Nanda tried to express the likely objective in his own style / words and his expressions can not be subjected to critical legal debate. It can not overlooked that since the affairs in 1947 were



entangled in procedural deficiencies even in the drawing of boundaries of Pakistan, the personal ambitions of those who were ruling J&K and those who were hoping to rule "Kashmir" after independence from British , the irritated retreating British mindset, environment created due to concepts carried by Sheikh Mohd Abdullah with the special support he got from some congress leaders and " undisclosed mind set / personal inclination of Nehru towards Sheikh. It could hence be inferred that in the case of J&K under the circumstances that prevailed before 15th Aug 1947 and that resulted in view of the handling of the affairs after Maharaja of J&K signed the instrument of accession, the then Govt. of India decided to give some more time to the Maharaja of J&K to define the methods for internal Governance of this Indian State. The article was incorporated (26 Jan 1950 ) much before the Regent of J&K issued(1-05-1951) proclamation for elections to the Constituent Assembly of J&K. Even the much talked about 1952 ( July / August ) Delhi accord was done between Nehru and Sheikh much after that.

J&K was included as integral part of the Indian Union in Indian Constitution, there is / was no article or provision of Article 370 / any other article that could be used for disintegration / secession purposes. As well as no reference in the constitution of India incorporated where in even the acceding Maharaja could order or demand secession of J&K. So, article 370 was a temporary provision inserted for meeting procedural needs.



The term of Constituent Assembly came into existence in May 1951 as regards the then government of J&K was concerned since before that the proclamation of Maharaja had used the term National Assembly in March 1948. But the Constitution of India used the term Constituent Assembly in Art 370 and it has to be understood that for all technical reasons it carried the agreement of the Maharaja of J&K / Regent as well since there was no one else in J&K authorized to accord such acceptances in 1950.

The requirement that had been created by the Mountbatten's letter of 27th Oct for endorsement of the accession by reference to the people of J&K, although it was outside the Instrument of Accession signed by Prince of J&K and did not have any legal sanctity, the same elected Constituent Assembly, thereafter, even endorsed Nehru / Sheikh Delhi Agreement in August 1952 and also ratified / endorsed in February 1954 ( the month in which it accepted the reports of the Principles Committee and the Draft Committee ) the accession done by Maharaja on 26th Oct 1947 { the reference of this is clearly made the preamble of J&K Constitution - "—WE, THE PEOPLE OF THE STATE OF JAMMU AND KASHMIR, having solemnly resolved, in pursuance of the accession of this State to India which took place on the twenty sixth day of October, 1947, to further define the existing relationship of the State with the Union of India as an integral part thereof, and to secure to ourselves— ..... IN OUR CONSTITUENT ASSEMBLY this seventeenth day of November,

1956, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION" . (Constitution of J&K as adopted on 17 Nov 1956). So it is not fair for any one to quote and interpret the affairs making isolated references.

AGN : The State was put in a status inferior to that of other States. One illustration suffices to demonstrate that. Parliament had to amend the Constitution four times, by means of the 59th, 64th, 67th and 68th Constitution Amendments, to extend the President's Rule imposed in Punjab on May 11, 1987. For the State of Jammu and Kashmir the same result was accomplished, from 1990 to 1996, by mere executive orders under Article 370.

DS : On one hand AGN says that Article 370 had given J&K special status and this status has been eroded unconstitutionally, where as on the other had you say that Art 370 had given inferior status to J&K compared to other Indian States. If , so will not it be a beneficial exercise for the people of J&K in case article 370 is abrogated / amended..

AGN :: On July 30, 1986, the President made an order under Article 370, extending to Kashmir Article 249 of Constitution in order to empower Parliament to legislate even on a matter in the State List on the strength of a Rajya Sabha resolution. "Concurrence" to this was given by the Centre's own appointee, Governor Jagmohan . G.A. Lone, a former Secretary, Law and Parliamentary Affairs, to the State Government described in Kashmir Times (April 20, 1995) how

the "manipulation" was done "in a single day" against the Law Secretary's advice and "in the absence of a Council of Ministers."

DS : There is no particular State list for J&K, please do not confuse people. It was not unconstitutional for President to issue an order under Article 370, extending to J&K (not Kashmir) Article 249 of the Constitution of India in order to empower Parliament to legislate on some matters like other States on the Strength of a Rajya Sabha resolution. Governor Jagmohan was not some body's personal appointee, he was appointed under the Constitutional provisions legally incorporated / extended to J&K and his concurrence qualified as concurrence of State Government. Surely it reflects Noorani's biased mind set, Governor was appointed under Constitution and not arbitrarily. No legislature / democratic government that followed in J&K thereafter legally questioned the Concurrence given by Jagmohan.

Mr. Noorani could approach SC of India ( although as per Noorani jurisdiction of SC should not have been extended to J&K). Mr. Noorani has mentioned no legal deficiency and lays his strengths on assumptions that according him, people then had unfair intentions and gave concurrence / or consents under the undue influence of those at Delhi. Similarly Mr. Lone the Law secretary came out after 13 years, why did he not resign on such a serious matter, why he not expose the real face in real legal terms in 1986 itself.



AGN :The Nehru-Abdullah Agreement in July 1952 ("the Delhi Agreement") confirmed that "the residuary powers of legislation" (on matters not mentioned in the State List or the Concurrent List), which Article 248 and Entry 97 (Union List) confer on the Union, will not apply to Kashmir. The order of 1986 purported to apply to the State Article 249, which empowers Parliament to legislate even on a matter in the State List if a Rajya Sabha resolution so authorises it by a two-thirds vote. But it so amended Article 249 in its application to Kashmir as in effect to apply Article 248 instead - "any matter specified in the resolution, being a matter which is not enumerated in the Union List or in the Concurrent List." The Union thus acquired the power to legislate not only on all matters in the State List, but others not mentioned in the Union List or the Concurrent List - the residuary power.

DS: First AGN, in case he holds independent opinion, should have acknowledged that though Delhi Agreement has not been disowned by GOI but legally speaking it was the Regent who could sign lay opinion / authorize on so called agreements like 1952 Delhi Agreement with GOI and not alone the two individuals like Nehru and Sheikh. Can not it be alleged that Nehru had unduly forced Yuvraj to lay at low profiles. Any how what done was since there was no State list particularly defined for J&K as for other States. The action was valid legally.

AGN : In relation to other States, an amendment to the Constitution would require a two-thirds vote by both Houses of Parliament plus ratification by the States (Article 368). For Kashmir, executive orders have sufficed since 1953 and can continue till Doomsday . ...

.Uniquely Kashmir negotiated the terms of its membership of the Union for five months. Article 370 was adopted by the Constituent Assembly as a result of those parleys.

DS : AGN Jee on the one hand you are siding with those who accuse the J&K Legislators / J&K Governments / GOI / India Parliament / Governors of eroding the article 370 and bringing J&K unduly / near to other Indian States as regards handling the local affairs and on the other hand you question that how long for Kashmir destinies would be decided only through executive orders under the provisions of Art 370. So, Noorani jee when all the provisions of Constitution of India shall apply to J&K like any other Indian States , ofcourse the temporary Article 370 will also go and "J&K" / AGN will have no occasion to complain of undue constitutional treatment through "executive" orders ( as has been advocated by AGN )..

AGN : Yet, all hell broke loose when the State Assembly adopted, on June 26, a resolution recording its acceptance of the report of the State Autonomy Committee (the Report) and asked "the Union Government and the Government of Jammu and Kashmir to take positive and effective steps for the implementation of the same."

DS : Why did the then NC Govt not follow the procedure laid in Congress & Sheikh Abdullah / Indira Gandhi & Sheikh Accord of 1974 ( although it had become ineffective after the exercises done by Sheikh Abdullah lead Govts in 1975 and 1977) for corrections , there after ,on case to case basis and sent the cases to GOI instead of doing a

formality of getting a resolution passed, that even if agreed upon, the corrections / reversions could not be done with a blanket executive order of the GOI since all modifications / extensions had been done under proper constitutional orders / authorities / provisions by earlier Governments / legislatures; procedures for corrections ,if could be done , had to be found and applied in constitutional manner.

In case the State Autonomy Report recommended moving to position / status as it existed before 1953 ,then, (1) it should have also touched the deficiencies in the manner Sheikh Abdulla handled this issue in 1975 almost closing the issues, (2) How would the new Government be installed , how new Constituent Assembly of J&K would be elected , who would head the interim Government ( surely not the 2000 Chief Minister ) ?

Mr. AGN is accepting the resolution passed by 2000 JK Assembly but earlier he has been endorsing BK Nehru alleging that all elections in J&K had been rigged . Then, how could Noorani endorse that the 2000 NC Government carried the real mandate of the people of J&K ?

AGN : On July 4, the Union Cabinet said that the resolution was "unacceptable... would set the clock back and reverse the natural process of harmonising the aspirations of the people of Jammu & Kashmir with the integrity of the State – a patent falsehood, as everyone knows.



DS : AGN says the 4 JULY 2000 resolution of Union Cabinet was a patent falsehood, as every one knows. Whom does Mr. Noorani counts in "everyone" ? In case he means all people of J&K, he is over estimating the level of his information.

AGN: The State's Law Minister, P.L. Handoo, said on June 26 that the people "want nothing more than what they had in 1953."

DS: Mr. Handoo did not mention a cut off date for 1953. Did he wanted Sheikh or his representative to be installed back, and if so on what basis. Or did Mr. Handoo mean that people of J&K wanted to be governed by J&K Constitution Act 1996 Samvat ? Surely not the Congress or NC could be given the administration on personal equation basis as it happened in 1947. Mr. Handoo has unfortunately left us and can not suggest, will Mr. Noorani suggest on his behalf?

AGN : If Parliament has legislated over the States on a matter on which it had no power to legislate, under the Constitution, it would be a nullity Especially if the State's people have been protesting meanwhile and their voice was stifled through rigged elections.

DS : Generalised accusations have already be questioned in the earlier paras. Can AGN quote legitimate protests from the people of J&K rather than simply siding with those who have occasionally raised some questions more to attract attention of New Delhi ( but also did not want to lose the goodwill of Delhi so that they retain the chances for remaining in power scene ) and did not do any thing to wipe out the

confusions that were created by the manner in which Nehru and Congress handled JK affairs from 1946 onwards...

AGN : The State's Finance Minister, Abdul Rahim Rather, a moving spirit behind the Report ( SAC), resents suggestions of political timing. The Government of India was "once again requested to set up a ministerial committee in order to initiate a dialogue on the report." ...

DS: Why again a dialogue ? Why did not they proceed as per the personal accord of 1974 between Indira and Sheikh and then see the response of Delhi ?

AGN : It ( SAC report ) provides a comprehensive survey of constitutional developments, which is useful in itself for its documentation. It lists 42 orders under Article 370 and gives the following opinion: "Not all these orders can be objected to. For instance, none can object to provisions for direct elections to Parliament in 1966... It is the principle that matters. Constitutional limits are there to be respected, not violated."

DS : On the one hand AGN does not reject those who advocate moving to 1953 / earlier and the other hand he talks of 1966. It shows they are not interested in solution , they want only confusions.

AGN :The ruler of Jammu and Kashmir acceded to India by an Instrument of Accession on October 26, 1947 in respect of only three subjects - defence, foreign affairs and communications. A schedule listed precisely 16 topics under these heads plus four others (elections to Union legislature and the like).

DS : Why repeat it again and again , to start with all Princes had to do the same , may be for a day or a few months. It can not be overlooked that Yuvraj Karan Singh, the Regent ( designated authority under Indian Independence Act 1947 ) too had issued a proclamation on 25th November 1949 formally owning the Constituent Assembly of India and its final draft. In case AGN is not biased , he should not overlook such orders/ communications, otherwise innocent common masses could be misguided.

AGN : Clause 5 of Instrument of Accession said that the Instrument could not be altered without the State's consent .

DS : The expression used is Maharaja & not 'State' , quoting the text like this can twist the facts. Clause 5 said "... The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act ,1947 , unless such amendment is accepted by me , an Instrument supplementary to this Instrument. And Clause 7 read: "Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future Constitution of India or fetter my discretion to enter into arrangements with the Government of India under any such future Constitution.

AGN :Kashmir was then governed internally by its own Constitution of 1939.The Maharaja made an Order on October 30, 1947 appointing Sheikh Abdullah the Head of the Emergency Administration, replacing it, on March 5, 1948, with an Interim Government with the Sheikh as Prime Minister. It was enjoined to convene a National Assembly "to frame a Constitution" for the



State. Negotiations were held on May 15 and 16, 1949 at Vallabhbhai Patel's residence in New Delhi on Kashmir's future set-up. Nehru and Abdullah were present. Foremost among the topics were "the framing of a Constitution for the State" and "the subjects in respect of which the State should accede to the Union of India" .

DS: Let me now examine details of events quoted. Sheikh Abdullah did not have any mandate / authority / approval to discuss issues like accession and future constitution on behalf of Maharaja. Mr. Noorani did he have ? You do not discuss such issues , why ?

AGN : AGN further says :On the first ( Constitution), Nehru recorded in a letter to the Sheikh (on May 18) that both Patel and he agreed that it was a matter for the State's Constituent Assembly. "In regard to (ii) ( subjects of accession) the Jammu and Kashmir State now stands acceded to the Indian Union in respect of three subjects; namely, foreign affairs, defence and communications. It will be for the Constituent Assembly of the State when convened, to determine in respect of which other subjects the State may accede".... (emphasis added, throughout). Article 370 embodies this basic principle which was reiterated throughout (S.W.J.N. Vol. 11; p. 12).

DS : But before that on March 5 , 1948 Maharaja had called for a National Assembly to frame a constitution to be approved by Maharaja. In May 1949 it was still Maharaja the local head of the State and Yuvraj Karan Singh was yet to be nominated by Maharaja as Regent. No doubt the term Constituent Assembly had been used in the Indian Constitution effective 26 November 1949 and the proclamation asking for elections to

constituent Assembly of J&K was issued on 1st May 1951 by the Regent of J&K, Yuvraj Karan Singh with the Authority of Maharaja Hari Singh. Reference made by AGN admits that Constituent Assembly had not decide the accession but had to decide which other subjects should be kept under the Union list in addition to subjects already mentioned in the instrument of accession. Hence there should not be any other confusion about accession.

AGN: On June 16, 1949, Sheikh Abdullah, Mirza Mohammad Afzal Beg, Maulana Mohammed Saeed Masoodi and Moti Ram Bagda joined the Constituent Assembly of India.

DS: Yes, they were nominated by Maharaja, the acceding Prince to participate in the Constituent Assembly of India.

AGN : Refers some debates etc on Article 370 ( Article 306 A ) and discussions with N. Gopalaswamy Ayyangar / Patel and Abdullah. I will discuss only the final orders / articles ;

DS: How could any agreement of ultimate value could have been drawn without the consent of Maharaja , had it been so , I would term it illegal even today.

AGN : ARTICLE 370 embodies six special provisions for Jammu and Kashmir. First, it exempted the State from the provisions of the Constitution providing for the governance of the States. Jammu and Kashmir was allowed to have its own Constitution within the Indian Union

DS : Article 370 nowhere mentions that JK will have a separate new unilateral Constitution, J&K State is not exempted from the provisions of the Constitution of India for the governance of the State. No doubt reference of Constituent Assembly is there and it was working out the arrangement for dealing with the affairs for the time being outside the "union list" as it pertained to J&K.

AGN : But, third, if other "constitutional" provisions or other Union powers were to be extended to Kashmir, the prior "concurrence" of the State government was required. The fourth feature is that that concurrence was provisional. It had to be ratified by the State's Constituent Assembly. Article 370(2) says clearly: "If the concurrence of the Government of the State... be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon."

DS : What is AGN's opinion about those approvals that were given by the REGENT / Maharaja even before issuance (1 May 1951) of notification for election of Constituent Assembly?

AGN : The fifth feature is that the State government's authority to give the "concurrence" lasts only till the State's Constituent Assembly is "convened";

DS : Had by then the Regent been removed, how could India presume that Maharaja would go away to the choice of Abdullah? AGN has not commented, why? Yes, Yuvraj had issued proclamation on 25 November 1949 to own the Constitution of India being drafted.



AGN : . Once the Constituent Assembly met, the State government could not give its own "concurrence"

DS : Did the proclamation dated 1st May 1951 say so any where ? Any how since the Yuvraj / or Maharaja did not contest Art 370, it can be taken that it carried his consent.

AGN: The President cannot exercise his power to extend the Indian Constitution to Kashmir indefinitely

DS : Quote law ? Did Article 370 say so ? President can do so as long as the constitutional provisions are not violated.

AGN : The power has to stop at the point the State's Constituent Assembly drafted the State's Constitution and decided finally what additional subjects to confer on the Union, and what other provisions of the Constitution of India should get extended to the State, rather than having their counterparts embodied in the State Constitution itself .

DS : The proclamation for constituting States Constituent Assembly did not say so. Nor have such references been made in the constitution itself, there is a section for amendment of constitution as well. The restriction for not allowing amendment of the Section 3 , 5 and 147 is there , the under lying purpose is that J&K will remain integral part of India ( Section 3 ) and the Jurisdiction of Indian Parliament for making laws for state can not be curtailed ( Section 5 ) as regards some subjects in particular.

AGN : . Once the State's Constituent Assembly had finalised the scheme and dispersed the President's extending powers ended completely .

DS: (i) On what day the members of Constituent Assembly dispersed ? No they did not disperse, only the function they were performing ended and the members stayed and functioned there after to work as Legislative Assembly and to handle the legislative affairs of J&K as per Constitution of J&K under the aegis of Constitution of India. Yuvraj' s proclamation had in 1951 named the Praja Sabha / Constituent Assembly / Legislative Assembly to be same as far as legislature was concerned.

(ii) Further if AGN is legally correct, Article 370 too should have been got amended same day, why was it not ? Did Constituent assembly make any recommendations to President in this regard? Surely not. Will AGN reply for the benefit of the innocent people of J&K who have been mis informed regularly over the years.

(iii) Does he mean that J&K Constitution can never be amended ? Constitution of India can never be amended ? Procedure for amending the constitution of India can never be modified / amended ? No sir, it is not so.

AGN : The sixth special feature, the last step in the process, is that Article 370(3) empowers the President to make an Order abrogating or amending it. But for this also "the recommendation" of the State's Constituent Assembly "shall be necessary before the President issues such a notification". Article 370 cannot be abrogated or amended by recourse to the amending provisions of the Constitution which apply to all the other States; namely, Article 368. For, in relation to Kashmir, Article 368 has a provision which says that no constitutional amendment "shall have effect in relation to the State of Jammu and Kashmir" unless

applied by Order of the President under Article 370. That requires the concurrence of the State's government and ratification by its Constituent Assembly.

DS : No sir, "the recommendation" of the State's Constituent Assembly shall be necessary and not the concurrence of the State Government and ratification by Constituent Assembly. Where do otherwise terms appear ?

AGN : Jammu and Kashmir is mentioned among the States of the Union in the First Schedule as Article 1 requires. But Article 370 (1) (c) says: "The provisions of Article 1 and of this Article shall apply in relation to that State". Article 1 is thus applied to the State through Article 370. What would be the effect of its abrogation, as the Bharatiya Janata Party demands?

DS : In case 370 is abrogated or modified, Article - 1 of Indian Constitution still stays and J&K Constitution too firmly lays that J&K is and shall remain integral part of India. J&K Constitution still can surrender more subjects to Indian Constitution on its own. More over for making this Article inoperative / modification of Article 370 recommendations of State Constituent Assembly are required ( "Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification ). As regards procedures to be



adopted under Art 368 of Indian Constitution, procedures can be amended. Art 368 makes no special reference for Art 370 (AMENDMENT OF THE CONSTITUTION of India Art 368. Power of Parliament to amend the Constitution and procedure therefor.— (1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article. 368(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article).

AGN :Ayyangar's exposition of Article 370 in the Constituent Assembly on October 17, 1949 is authoritative. "We have also agreed that the will of the people through the instrument of the Constituent Assembly will determine the Constitution of the State as well as the sphere of Union jurisdiction over the State..."

DS : Quotes being made could be argued by some to be like going beyond the subjects of instrument of accession without concurrence of the Maharaja / Regent ? . More over there is no purpose in going into the proceedings , lets go only what the orders / acts / laws say and not enter into debates by quoting the expressions of individuals. Go by what has been finally written and laid as order / Law / Constitutional provision .Otherwise arguments and debates would never end. Any how the Constituent Assembly ratified the 1947

Accession also, though it could be argued by some that it was not needed. AGN why you still talk of conditional accession at occasions when you depend so much on the CONSTITUENT Assembly logic to substantiate your arguments ? do you want to simply plead the cause of "SOME" to mislead the common man of J&K Valley.

AGN : (i) This unique process of Presidential Orders altering constitutional provisions by a mere executive order ends with the final decision of the State's Constituent Assembly.

(ii) In 1949, no one knew when Kashmir's Constituent Assembly would be elected. Ayyangar therefore said: "The idea is that even before the Constituent Assembly meets, it may be necessary... that certain items which are not included in the Instrument of Accession would be appropriately added to that list in the Instrument... and as this may happen before the Constituent Assembly meets, the only authority from whom we can get consent for the addition is the Government of the State." This was explicitly only for that interim period. Article 370 (1) (b) is clear. Once Kashmir's Constituent Assembly was "convened" on November 5, 1951, the State Government lost all authority to accord its "concurrence" to the Union.

DS : This has been discussed enough. No comments on dates here. The concurrence recommendations of States Constituent Assembly had to be communicated to the President through the State Government and direct by CA. Consent does not mean concurrence.

AGN: With the Assembly's ( Constituent assembly) dispersal on November 17, 1956, after adopting the Constitution of Jammu and Kashmir, vanished the only

authority which alone could cede: (a) more powers to the Union and (b) accept Union institutions other than those specified in the Instrument of Accession. All additions to Union powers since then are unconstitutional.

DS: The Constituent Assembly of J&K was named as Legislative Assembly also in J&K Constitution Act 1996 Samvat 2008 Samvat 1951 AD. So, after the work of Constitution drafting and acceptance was over the same assembly stayed there to perform further in legislature as Legislative Assembly and now the LA could do the job of CA for the purposes of Art 370 if it still stayed. Where is it mentioned in the Proclamation of 1st May 1951 that the constitution framed by CA would have focus on the subjects of accession for ultimate settlement with completion of constitution of J&K ? In case, J&K Assembly could amend J&K Constitution, it could also perform functions that could be performed by the Constituent Assembly within the provisions of India Constitution / State Constitution. It can also be said that Article 370 is only an article of constitutional procedures as regards J&K. So, in "AGN" terms additions to "Union powers" since then are not at all unconstitutional.

AGN : THE Constituent Assembly of India adopted the Constitution on November 26, 1949. A day earlier, the ruler of Kashmir ( J&K ) made a Proclamation declaring that " it shall in so far as it is applicable to the State of Jammu and Kashmir, govern the constitutional relationships between this State and the contemplated Union of India". Article 370 is more than a provision of that solemn document. It is also a sacred contract with the State. On January 26, 1950, the



President made his first Order under Article 370, extending specified provisions of the new Constitution to the State.

DS : The Maharaja had acceded to India in Oct 1947 and had sent his representatives to participate in Constituent Assembly of India in 1949 and hence had consented to own the Constitution of India. With accession of 26th Oct 1947 Maharaja had not surrendered all his rights of a Prince / Head of the Government of a acceding Princely State.

As said earlier some procedural channel was kept as regards J&K inview of prevailing circumstances temporarily to stay for longer time in comparison to other states that too acceded and the Princes there too took some time to define there relationship / express total oneness with the Constituent Assembly of Independent India Dominion that was to frame the Constitution of India, may from a day to some months. It can not be overlooked that Yuvraj Karan Singh , the Regent ( designated authority under Indian Independence Act 1947 ) too had issued the proclamation of 25th November 1949 formally owning the Constituent Assembly of India and its final draft. This fact is very reluctantly mentioned by " experts" . I will not be wise to call Center State relations , a contract

AGN : Two issues came to the fore. Nehru was eager to secure Kashmir's "closer integration" with India; the Sheikh to ensure popular governance. The Delhi Agreement that followed was announced at a press conference in Delhi on July 24, 1952 by both. This

Union-Centre accord had no legal force by itself only an Order under Article 370 could confer that – after the Sheikh gave his "concurrence" formally.

DS : Yes simple agreement between Nehru and Sheikh had no legal / constitutional validity / force. Sheikh had no authority to concur on such issues in July / August 1952 unless it was authorized / concurred / endorsed by Regent / Maharaja. No, Sheikh was not to ensure popular governance , he was to ensure governance to his personal choice as far as possible. Then also Delhi revolved the J&K ( Kashmir ) issues only around the liking of Sheikh Mohd Abdullah which became the reason for prolonged confusions as regards the J&K affairs in the minds of the acceding / acceded prince of J&K and many years after that also some commentators are still focused on Sheikh Abdullah only and do not make any reference to the importance of the Regent ,unless they are compelled.

AGN : The Sheikh, meanwhile, pressed for an Order to redraft "the Explanation" in Article 370 redefining the State government as one headed by an elected "Sadar-i-Riyasat (State President)... acting on the advice" of his Ministers.

DS: Why did Sheikh press? Why did he not approach the Regent, who was the right authority for amending the J&K Constitution Act 1996 Samvat or for proposing to GOI / President of India ? Such Actions of Sheikh clearly demonstrate the reasons for delayed settlement of issues concerning the acceded State of J&K.

AGN :As for the Sheikh's request, Nehru wrote on July 29, 1952: "It is not a perfectly clear matter from the legal point of view how far the President can issue notifications under Article 370 several times."

DS: Without going into the time / purpose / validity of the references made that are not orders , only thing that one should ask is why did not Nehru in his letter ask Sheikh to approach through the Regent / Sadar e Riayasat of the time who still had powers to dismiss his Prime Minister of interim local Government.

AGN :On September 6, 1952, President Rajendra Prasad pointed out the illegality of such a course in a closely reasoned Note... He questioned "the competence of the President to have repeated recourse to the extraordinary powers conferred on him" by Article 370. "Any provision authorising the executive government to make amendments in the Constitution" was an incongruity. He endorsed Ayyangar's views on the finality of a single Order under Article 370. "I have little doubt myself that the intention is that the power is to be exercised only once, for then alone would it be possible to determine with precision which particular provisions should be accepted and which modified."

DS : Going by the quotes made above ( accepting them in the form as are quoted), (i) it emerges recommendations made by the JK Constituent Assembly / State Government as regards the constitutional matters could also be modified / refused and were not sure binding on the President (ii) other thing that should rather have been inferred from the above reference is that President of India might be wanting that Nehru gives final word to his friend Sheikh Abdullah that



he has been too much accommodated. ( It was only due to such like reasons that Sheikh Abdullah landed the Union in so difficult position that Nehru had no option to get him dismissed and even arrested) (iii) Rajinder Prasad jee wanted to make it clear that article 370 is temporary and uncertainty should not be continued for more time (vi ) The process President suggested indirectly pointed towards the need for total / more involvement of Maharaja / Regent in the affairs.

AGN : The President concluded: "The conclusion, therefore, seems to me to be irresistible that Clause (3) of Article 370 was not intended to be used from time to time as occasion required. Nor was it intended to be used without any limit as to time. The correct view appears to be that recourse is to be had to this clause only when the Constituent Assembly (sic) (Constitution) of the State has been fully framed."

DS : (i) Yes, it could be inferred that President in a way suggested that the finalization of the exercise being done by Constituent Assembly should be expedited, the local constitutional head as per the terms of accession / J&K Constitution Act of 1996 Samvat ( / Maharaja / Prince / Regent ) should favourably accept it and endorse it for acceptance by GOI / President; and then only India can make preferably orders covering all possible issues in sight to end confusions / prevailing uncertainty in governance later

(ii) Although not officially documented , from the events it could be assessed that it was Sheikh who brought pressures on REGENT from Delhi to accept the 21 August 1952 resolution of Constituent Assembly ( that in a way authorized

the PM of the interim Government Sheikh Abdullah to carry the resolution to the GOI and had made no reference of the Regent for the purpose ) as regards elected Sadar-e-Riyasat . ( iii ) It was so compassionate attitude of the Regent that then followed the J&K Constitution 1996 Samvat Amendment order 17 Nov 1952 that was out on November 17, 1952. It could be only the out come of Nehru's pressure that Karan Singh has been quoted elected as Sadar-e-Riasat by the Constituent Assembly on November 15, 1952. (accepting and projecting Karan Singh as Sadar-e-Riyasat acting on the advice of his Council of Ministers even before the Regent issued the Constitution amendment order on 17 November 1952)

AGN : Events took a tragic course. The Sheikh was dismissed from office and imprisoned on August 9, 1953 (vide the writer's article, How and Why Nehru and Abdullah Fell Out": Economic and Political Weekly; January 30, 1999).

DS : Yes, the Memorandum given by the Colleagues of Sheikh Abdullah the PM of Interim Government on 8th August 1953 ( .. "Since the formation of the present Government, in spite of the constant endeavour of your colleagues to secure maximum agreement and unity in the formation and execution of essential policies in accordance with the mandate given by the people, you have frequently adopted certain arbitrary measures complete denial of the right of expression of opinion of even your own colleagues in the handling both of external and internal affairs of the State." ... "But we regret

to observe that you have not only disregarded the wishes of your colleagues in the Cabinet but have acted in the Legislative Assembly also in a manner which denied the right of freely expressing their opinions to the representatives of the people in regard to the basic policies pursued by the Government." ... "you have consistently refused to acknowledge responsibilities that devolve on you as the Prime Minister of the State by not following the declared policies that form the basis of the Government. You have tended to act in a manner that has generated uncertainty, suspense and doubt in the minds of the people of the State in general and of those in Jammu and Ladakh in particular." ..

"The united will of the people stood solidly behind this act of Kashmir's accession to India. While accepting our request, the Government of India assured us of the right of self-determination for our people. After the convening of the Constituent Assembly, certain inescapable elaborations of the State's relationship with India were defined in the Delhi Agreement, of which you were the Chief Architect on our behalf. Your stand was unanimously endorsed by the Government, the National Conference, the Indian Parliament and the Constituent Assembly of the State. But you have not only deliberately delayed implementation of the agreements on these matters which form the sheet-anchor of our policy, but have purposefully and openly denounced these in public. You have thus arbitrarily sought to precipitate a rupture in the relationship of the State with India. Though it is true that the people of the State have the ultimate



right to decide their future, the conditions of chaos and confusion which are being engineered today by you are bound to be fatal for the exercise of the right of self-determination by our people. Under these circumstances what seems inevitable is that interested foreign powers may well take advantage of and exploit the situation for their own selfish purpose. Mr. M.A. Beg has persistently been following policies of narrow sectarianism, and communalism, which have seriously undermined the the oneness of the State. Unfortunately, you have been lending your support to his policies in the Cabinet and his activities in public. This has generated bitter feelings of suspicion and doubt in the minds of the people of various constituent units of the State. You have connived at all these unfortunate happenings and thus strengthened and encouraged the forces of disruption. The result is that unity and the secular character, the two fundamental aspects of our State, stand threatened today." ...

"We have been constantly urging upon you to put an end to these unhealthy tendencies and to under take unitedly measures for restoring the moral of the people. In spite of our best intentions, we have failed in our efforts. It is, therefore, with great pain that we have to inform you of our conclusion that the Cabinet, constituted as it is at present and lacking as it does the unity of purpose and action, has lost the confidence of the people in its ability to give them a clean, efficient and healthy administration" ) and the dismissal order issued by Sadar-e-Riyasat on 8th August 1953 (

"Where as for some months I have been noticing with growing concern that there have existed

acute differences of opinion between members of the Government on basic issues –political, economic and administrative—affecting the vital interests of the State; ...And whereas on these fundamental issues the view of a majority of the members the Cabinet are sharply opposed to the view held by the Prime Minister and one of his colleagues; .....And whereas efforts to work in harmony and pull together as a team having failed,.....And whereas a state has reached in which the very process of honest and efficient administration has become impracticable; ... I, Karan Singh, Sadar-i-Riyasat, functioning in the interests of the people of the State, who have reposed the responsibility and authority of the Headship of the State in me, do hereby dismiss Sheikh Mohammad Abdullah from the Prime Ministership of the State of Jammu and Kashmir, and consequently the Council of Ministers headed by him is dissolved forthwith.' ) are well speaking official documents that have not been challenged in any court / quashed by any court. No other stories need be quoted .

Why AGN has not centered his commentary around these facts is a question. These facts also make it clear why other princes took only from few days to few months after accession for total participation in the new dominion constitution of India and for J&K the issues remained hanging for 6 years till 1953 when Sheikh was earlier projected by Nehru as the Indian of class one and a staunch votary of Indian Dominion.

AGN: On May 14, 1954 came a comprehensive Presidential Order under Article 370. Although it was purported to have been made with the "concurrence" of the State government it drew validity from a resolution of the Constituent Assembly on February 15, 1954 which approved extension of some provisions of the Constitution of India to the State .

DS : I fail to understand what AGN wants to present. Some where he totally rejects the Regent as State Government , some where he even questions the resolutions of the Constituent Assembly to his bare choice. A formal adoption /endorsement of the Presidential order of 14 May 1954 was also laid down by the Maharajas representative, the Regent / the Sadar-e-Riyasat in the Jammu and Kashmir Constitution Act 1996 of 2011 Samvat /15 May 1954 AD. So, the inference drawn that Presidential Order issued under Art 370 was not issued with the concurrence of State Government is totally misconceived and wrong /misguiding presentation of the official records. Any how, before that the Constituent Assembly in February 1952 had ratified / endorsed the 26th Oct 1947 accession by the Maharaja with India Dominion (necessity emerged in view of the controversy created by Mountbatten' s letter of 27th Oct 1947 as also discussed earlier ).

AGN :: The Order sought to implement the Delhi Agreement. Why the haste since the State's Constitution was yet to be framed? Besides, the order in some respects went beyond the Delhi Agreement.

DS : THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER, 1954 of the President nowhere mentions that the order

sought to implement the 1952 Delhi Agreement. More over the Delhi agreement was not the world of God. There could be many other reasons / needs / principle fact on which the requirement for issuing such order was based. Order had to be based on Constitutional provisions as existed at time / acceptance of the State Government / Sadar-e-Riyasat / Constituent Assembly and let us say even messages emerging from 1952 Delhi agreement ) . We have to look at the order and it' s validity. The order was valid.

AGN : It (1954 Presidential order 14 may 1954) certainly paved the way for more such Orders – all with "the concurrence of the State Government", each elected moreover in a rigged poll .

DS: It is only AGN' s own version ( who knows only some parts of the Kashmir Valley and all the people of J&K ). Any one can imagine to his will, but such inferences and declarations can not become a lawful reality .

AGN : 94 of the 97 Entries in the Union List and 26 of the 47 in the Concurrent List were extended to Kashmir as were 260 of the 395 Articles of the Constitution .

DS : What problem did it create for the people of J&K in general , Mr. Noorani has not spelled out , nor could the Sheikh Abdullah Government in 1975.

AGN : Worse, the State's Constitution was overridden by the Centre's orders. Its basic structure was altered.



DS : How could a government order write constitution , pl do not misrepresent the facts. No , what ever was done was under the provisions of the Constitution of India and Constitution of J&K and was by the nominated authorities of the times under the constitutional provisions.

AGN : Article 356 (imposition of President's Rule) was applied ( 21-11-1964 ) despite provision in the State's Constitution for Governor's rule (Section 92).

DS: In his earlier pleadings ( making reference to extension of President rule in Punjab) he has said as regards Section -92 of JK Constitution and application of Art 356 that JK was put under disadvantage compared to other States by Art 92 of J&K Constitution.

AGN : The head of State elected by the State legislature was replaced by a Governor nominated by the Centre. On November 24, 1966, the Governor replaced the Sadar-i-Riyasat after the State's Constitution had been amended on April 10, 1965 by the 6th Amendment in violation of Section 147 of the Constitution. Section 147 makes itself immune to amendment. But it referred to the Sadar-i-Riyasat and required his assent to constitutional amendments .He was elected by the Assembly [Section 27 (2)]. To replace him by the Centre's nominee was to alter the basic structure

DS: It was no amendment to Section 147 nor was an amendment to procedures. Section 147 has clearly laid down that Section-3 and Section-5 can not be amended by State Legislature including Section 147 itself. Section 147 no where lays down that Section -27 can not be amended.

While amending the Sections, 27,29,30 and like of J&K Constitution only the procedure for the appointment of Sadar-e-Riyasat and nomenclature has been changed. Section-147 does not put any bar in this regard. The condition for passing a bill on constitutional amendment except undoing the Legislative Council ( Section-50 ) needs the vote of the 2/3rd of the Total membership ( and not those present ) of each house and that has nowhere been touched and it was with that force ( even stronger than what is laid for amending Constitution of India ) that Section -27 was modified by the J&K Assembly for the purposes of any further Actions taken by Union there after. How could any one question the democratic authority of elected Assembly (even Sadar e Riyasat had named the Constituent Assembly as Legislative Assembly in his order of 9th August 1953 inviting Bakshi Ghulam Mohd to take over as the Prime Minister of his Governemnt.

AGN : Article 370 was used freely not only to amend the Constitution of India but also of the State. On July 23, 1975 an Order was made debarring the State legislature from amending the State Constitution on matters in respect of the Governor, the Election Commission and even "the composition" of the Upper House, the Legislative Council

DS : AGN this was done with the Consent of State Government , particularly Sheikh Abdulla. Even Sheikh Abdullah did not find any wrong in this, Then cause of whose heir apparent are you pleading Sir ? .

AGN : It would be legitimate to ask how all this could pass muster when there existed a Supreme Court of India. Three cases it decided tell a sorry tale. In Prem Nath Kaul vs State of J&K, decided in 1959, a Constitution Bench consisting of five judges unanimously held that Article 370 (2) "shows that the Constitution-makers attached great importance to the final decision of the Constituent Assembly, and the continuance of the exercise of powers conferred on the Parliament and the President by the relevant temporary provision of Article 370 (1) is made conditional on the final approval by the said Constituent Assembly in the said matters". It referred to Clause 3 and said that "the proviso to Clause (3) also emphasizes the importance which was attached to the final decision of Constituent Assembly of Kashmir in regard to the relevant matters covered by Article 370". The court ruled that "the Constitution-makers were obviously anxious that the said relationship should be finally determined by the Constituent Assembly of the State itself."

DS : What AGN ji you want to convey and in what context ?

AGN: But, in 1968, in Sampat Prakash vs the State of J&K, another Bench ruled to the contrary without even referring to the 1959 case. Justice M. Hidayatullah sat on both Benches. The court held that Article 370 can still be used to make orders there under despite the fact that the State's Constituent Assembly had ceased to exist..

DS : Yes, Sir, the Legislative assembly is the face of Constituent assembly for future references as defined in J&K Const Act 1996 amended 2008 Samvant.

AGN :FOUR BASIC flaws stand out in the judgment (SC) ..

DS: Why does not AGN take it in SC instead of pleading for others in media ? Please do not try to drag the common innocent people in the text. Of course, Article 370 makes no mention at all of the completion of its (constituent assembly) work or its dissolution.

AGN : The supreme power of the State's Constituent Assembly to ratify any change, or refuse to do so, was clearly indicated. Clause (3) on the cessation of Article 370 makes it clearer still. But the court picked on this clause to hold that since the Assembly had made no recommendation that Article 370 be abrogated, it should continue. It, surely, does not follow that after that body dispersed the Union acquired the power to amass powers by invoking Article 370 when the decisive ratificatory body was gone .

DS : No comments on the SC judgment. Any how as already explained Legislative Assembly remained to represent Constituent Assembly. But sir, do not use selective references. Your inference about Constituent Assembly and Legislative assembly are not valid as already submitted.

AGN : Lastly, the court misconstrued the State Constituent Assembly's recommendation of November 17, 1952, referred to earlier, which merely defined in an explanation "the Government of the State". To the court this meant that the Assembly had "expressed its agreement to the continued operation of this Article by making a recommendation that it should be operative with this modification only."

DS : It is being ignored deliberately that that the resolution / definition was accepted by the REGENT also.



AGN : It had in fact made no such recommendation. The Explanation said no more than that "for the purposes of this Article, the Government of the State means..." It does not, and indeed, cannot remove the limitations on the Central Government's power to concurrence imposed by Clause (2); namely ratification by the Constituent Assembly.

DS : Noorani jee is repeatedly beating same (I shall not say dead) arguments / inferences. No further comments.

AGN: The court laid down no limit whatever whether as regards the time or the content. "We must give the widest effect to the meaning of the word 'modification' used in Article 370 (1)". The net result of this ruling was to give a carte blanche to the Government of India to extend to Kashmir such of the provisions of the Constitution of India as it pleased;

DS : How could SC decide the time frame for future ? No blanket powers, it has to be with the consent / concurrence of State Government wherever still needed. Why is this being misrepresented (by AGN), is not known.

AGN : In 1972, in Mohammed Maqbool Damnoo vs the State of J & K, another Bench blew sky high the tortuous meaning given to the Explanation. It was a definition which had become "otiose". But this Bench also did not refer to the 1959 ruling. Cases there are, albeit rare, when courts have overlooked a precedent. But that is when there is a plethora of them. Article 370 gave rise only to three cases. The first was studiously ignored in both that followed. The court found no difference between an elected Sadar and an appointed Governor. "There is no question of such a change being one in the character of that government

from a democratic to a non-democratic system." If the Constitution of India is amended to empower the Prime Minister to nominate the President as Sri Lanka's 1972 Constitution did – would it make no difference to its democratic character, pray? To this Bench "the essential feature" of Article 370 (1) (b) and (d) is "the necessity of the concurrence of the State Government", not the Constituent Assembly. This case was decided before the Supreme Court formulated in 1973 the doctrine of the un amendable basic structure of the Constitution.

DS : Here too AGN should approach SC for answer.

Only thing that may help AGN to under the differences could be that in the First final draft of the Constitution of J&K the process for removal / impeachment of Sadar e Riyasat was not as elaborate and trying as it was for President of India in the Constitution of India . President of India and Sadar e Riyasat can not be compared as long one honours the Constitution of India and Constitution of J&K. Further Sadar-e-Riyasat had to be elected by Assembly and name communicated to President of India by State government for acceptance . Amendment has been made by the State Assembly and it was the Constituent Assembly / Legislative Assembly that had resolved in the past to change the nomenclature / style of head State.

AGN : GIVEN their record, whenever Kashmir is involved, how can anyone ask Kashmiris to welcome Union institutions (such as the Election Commission) with warmth?

DS : No logic. Anyhow does AGN mean Kashmir Valley only, that too only a few ? If so, then no one can help him. Rather such like approach would be more damaging to the cause of the innocent common man of Kashmir in particular and J&K in general.

AGN : Sheikh Abdullah had no cards to play when he concluded an Accord with Indira Gandhi and became Chief Minister on February 24, 1975.

DS : Surely he was desperate to share power and ensure safe and secure future for his men. Otherwise why should he have accepted the positions in case he had no cards to play and was sincere to atleast the people of " Kashmir Valley" ?

AGN : (i) At the outset, on August 23, 1974, he ( Sheikh) had written to G. Parthasarathy: "I hope that I have made it abundantly clear to you that I can assume office only on the basis of the position as it existed on August 8, 1953." Judgment on the changes since "will be deferred until the newly elected Assembly comes into being". On November 13, 1974, G.P. and M.A. Beg signed "agreed conclusions" - Article 370 remained; so did the residuary powers of legislation (except in regard to anti-national acts); Constitutional provisions extended with changes can be "altered or repealed"; the State could review Central laws on specified topics (welfare, culture, and so on) counting on the Centre's "sympathetic consideration"; a new bar on amendment to the State Constitution regarding the Governor and the E.C. Differences on "nomenclature" of the Governor and

Chief Minister were "remitted to the principals". Differences persisted on the E.C., Article 356 and other points.

DS (i) No comments. (ii) On November 25, (1974) the Sheikh sought a meeting with Prime Minister Indira Gandhi. Her reply not only expressed doubt on the usefulness of talks but also on his commitment to "the basic features of the State's Constitution" and to "the democratic functioning" of the government. Hurt, he wrote back ending the parleys. They met at Pahalgam. An exchange of letters, on February 12, 1975, clinched the deal on the basis of the Agreed Conclusions. This was a political accord between an individual, however eminent, and the Government, like the Punjab Accord (July 24, 1985); the Assam Accord (August 15, 1985); the Nagaland Accord (November 11, 1975); and the Mizoram Accord (June 30, 1986) – each between the government and the opposition. It cannot override Article 370; still less sanctify Constitutional abuse. It bound the Sheikh alone and only until 1977. This was explicitly an accord on "political cooperation between us", as Indira Gandhi wrote (December 16, 1974). On February 12, 1975, Abdullah recorded that it provided "a good basis for my cooperation at the political level". In Parliament on March 3, 1975 she called it a "new political understanding". DS (ii) : Since Sheikh had found nothing wrong in post 8th August 1953 amends, and to protect him for having not stood to his slogans, AGN is now naming the 1974 accord as an political accord between persons. It is surely not fair.



AGN (iii) : He (SMA) was made Chief Minister on February 24, backed by the Congress' majority in the Assembly and on the understanding of a fresh election soon. Sheikh Abdullah's memoirs *Aatish-e-Chinar* (Urdu) record her backtracking on the pledge and the Congress' perfidy in March 1977 when she lost the Lok Sabha elections. It withdrew support and staked a claim to form a government. Governor's Rule was imposed. The Sheikh's National Conference won the elections with a resounding majority on the pledge to restore Jammu and Kashmir's autonomy, which was also Farooq's pledge in 1996.

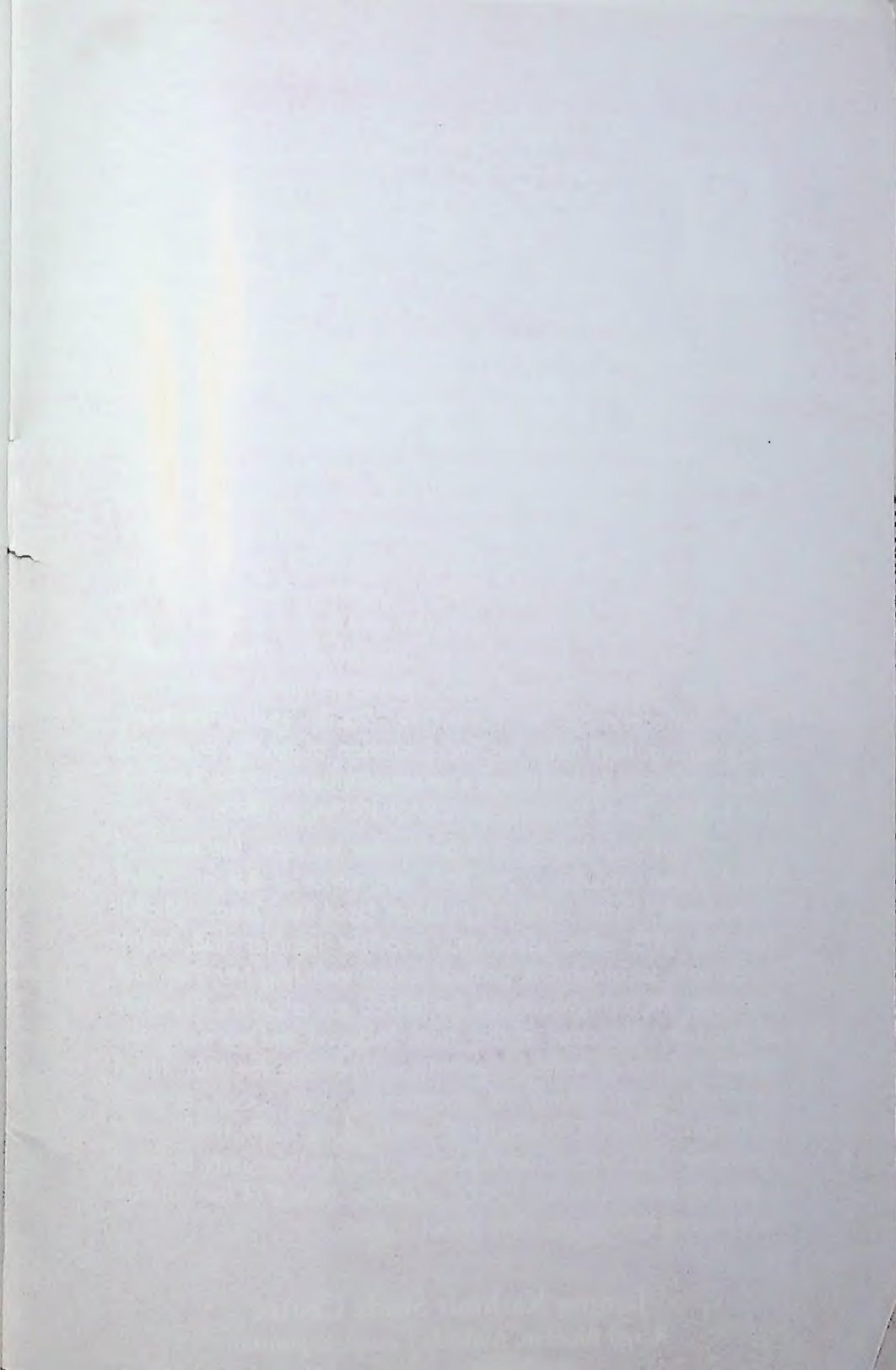
DS (iii) : Why did not the Sheikh Abdullah after he came to power again after 1977 assembly elections do the corrections / send individual proposals for reversions to the position he had left in 1953 as quoted earlier . Who stopped him ? Surely his own desires to be in power. Does Mr. AGN wants to say that in *Aatish-e-Chinar* Sheikh Abdullah alleged that the Janta Party Government in 1977 did not honour the commitment that Indira Gandhi Government had made with him in 1974 Accord ? Sorry, no one would buy such logics.

AGN (iv) :The 1975 accord had collapsed. It was, I can reveal, based on gross error. The Agreed Conclusions said (Para 3): "But provisions of the Constitution already applied to the State of J&K without adaptation or modification are unalterable." ..... One order can always be rescinded by another. All the orders since 1954 can be revoked; they are a nullity anyway. Beg was precariously ill and relied on advice which GP's "expert" had given him. He was one S. Bala Krishnan whom R.Venkataraman refers to as "Constitutional Adviser in the Home Ministry" in his memoirs. It is no disrespect to point out that issues of such complexity

and consequence are for counsel's opinion; not from a solicitor, still less a bureaucrat even if he had read the law. Even the Law Secretary would have insisted on the Attorney-General's opinion. Amazed at what Beg had told me in May 1975, I pursued the matter and eventually met Balakrishnan in 1987. He confirmed that he had, indeed, given such advice. ... The 1975 Accord is worse than useless. It is harmful to the State's rights and interests. It has neither legal efficacy nor moral worth.

DS: Why has not Sheikh Abdullah been questioned by experts who are desperate to lay hands on any anti India movements ? Why accuse the constitution, legislature and intentions of India without any facts of law , but just out of imaginative inferences and one sided arguments.









Daya Sagar is a free-lancer scribe. He freely and critically covers social, education, economy, international relations, human rights, and subjects like J&K affairs/history of J&K. He has over 850 articles published in different newspapers / magazines (published from Srinagar City, Jammu City and other cities) over the last 22 years. He is an Engineer by profession with a Post Graduate Degree (1971). Professionally also he has excelled as Engineer. He has worked in Private as well as Public Sector for 34 years.

Sagar is an original thinker. He is working in the voluntary sector for the social / human needs & rights of the under privileged / needy since 1980. He has remained associated / is associated with social organisations (even headed some organisations) like J&K Samaj Kalyan Kendra primarily working for the welfare of the Hearing Handicap)/ Handicapped / underprivileged , Jammu Gramin Vikas Sanstha (working in the rural health and education sector), etc . Sagar is Advisor to International Human Rights Protection Council, Jammu (J&K). He has remained President of J&K Confederation of Voluntary, Social and Charitable Organisations. Daya Sagar has the distinction of having promoted the idea of Social Audit through a voluntary group--Group Research and Audit on Social Programmes (GRASP INDIA) in 1990s.

Daya Sagar belongs to a family that has seen the times of Sheikh Mohd Abdullah / pre 1953 days, times of Bakshi Gulam Mohammed / Shams u Din / G.M.Sadiq/ Sayed Mir Qasim / Sheikh Abdullah 1975 once again. His associate families had many bureaucrats, social activists, political leaders including Ministers and legislators. He is always available for joining any effort for the cause of humanity. The cause of the rural, backward and economically weaker sections of society is priority number one for him. He is particularly working on promoting the concept of HUMANITARIAN COEFFICIENT (HQ) along with Intelligence Coefficient (IQ) since no intelligence is of use to Humanity unless it is used for the WELFARE / CAUSE of Others. VOICE of the unheard carrying awareness to remotely placed Indians.

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